

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

FREEPLAY MUSIC CORP.,

Plaintiff,

- against -

HAAS OUTDOORS, INC. and
OUTDOOR CHANNEL, INC.,

Defendants.

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: Index No. 06 CV 7618
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: **AMENDED COMPLAINT**
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: **JURY TRIAL DEMANDED**
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Plaintiff Freeplay Music Corp., by its attorney, Christopher Serbagi, for its complaint against the above-named Defendants, alleges as follows:

NATURE OF ACTION

1. This is an action for federal copyright infringement and unfair competition arising from the Defendants' willful infringement of Plaintiff's copyrighted works.

JURISDICTION AND VENUE

2. This court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1332, and 1338 and 15 U.S.C. § 1121(a).

3. This Court has personal jurisdiction over the Defendant pursuant to C.P.L.R. § 302.

4. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(b) and 1391(c).

THE PARTIES

5. Plaintiff Freeplay Music Corp. ("Freeplay") is a New York corporation, whose principal place of business is 1650 Broadway, New York, New York.

6. Upon information and belief, Defendant Haas Outdoors, Inc. ("Haas") is a Mississippi corporation, with its principal place of business at 200 E. Main Street, P.O. Box 757, West Point, Mississippi.

7. Upon information and belief, Defendant Outdoor Channel, Inc. ("TOCI") is a Nevada corporation, with its principal place of business at 43445 Business Park Drive, Suite 103, Temecula, California.

ALLEGATIONS COMMON TO ALL COUNTS

8. Among other things, Freeplay offers an on-line music library, which is a comprehensive collection of High End Broadcast production music spanning all the popular musical genres, available for preview, download and licensing either on-line at www.freeplaymusic.com or via portable hard drive. Freeplay's unique technology approach for reporting broadcast performances levels the playing field of time, date and duration broadcast performances, giving every composer represented in its Freeplay Music catalogue the same opportunity of equality and accuracy in music detection reporting to the performing rights societies (ASCAP, BMI and SESAC) never realized under today's current manual cue sheet reporting methods. Freeplay's vision and continued mission is to expand the scope and depth of the Freeplay Music Library, and introduce additional offerings that set new standards as well as meet the production music needs of creative professionals and users around the globe.

9. Freeplay owns copyright registrations for approximately two thousand musical compositions and sound recordings (collectively, the “Sound Recordings”) and has approximately sixteen million impressions to the freeplaymusic.com website.

10. During the applicable time periods of Defendants’ infringement as set forth herein, Freeplay’s business model has been to provide the music on its web site, without a separate paid license, to a National Broadcaster only if at the time Freeplay’s music is downloaded the National Broadcaster has (i) a valid blanket license with all three Performing Rights Societies, BMI, ASCAP, or SESAC (depending upon which Freeplay music titles are being selected for broadcast use under Freeplay’s terms of use) and (ii) submits timely and accurate cue sheets to the applicable performing rights organization (which results in performance royalties to Freeplay and its composers). The foregoing conditions for the use of Freeplay’s Sound Recordings have been clearly set forth in the “terms of use” on Freeplay’s web site. If a National Broadcaster does not comply with both of the foregoing conditions, the use of Freeplay’s music is not authorized and unless Freeplay otherwise licenses the use, it constitutes an infringement of Freeplay’s copyrights. Defendants have recently tried to mischaracterize to the Court that Freeplay’s music is available “free” of charge, when as Defendants well know, that completely contradicts Freeplay’s business model and terms of use as set forth above. Freeplay offers “free” use of its music as defined in its terms of use for personal, non-commercial, private use, as well as for student educational use (on school grounds, not including broadcast).

11. On information and belief, Defendant Haas is one of the country’s largest manufacturers and distributors of camouflage fabric, clothing and accessories. Haas also, *inter alia*, produces television shows featuring outdoor activities, which reaches over forty million

homes on a weekly basis. Haas Outdoors employs the brand name “Mossy Oak Productions” in connection with, *inter alia*, the outdoor television programming it produces.

12. On information and belief, TOCI broadcasts programming featuring outdoor activities, including shooting, hunting, and fishing.

13. In written communications, Defendant Haas has admitted to using copyrighted music from Freeplay’s web site producing, between 2004 and 2006, an estimated 312 episodes of programs which contain the Sound Recordings. Defendant Haas has admitted to arranging for the broadcast of these infringing programs to the Defendant TOCI, who has broadcast them throughout the country, including New York. In particular, even judging by the incomplete cue sheets that Defendant Haas sent to Freeplay, Defendant Haas has admitted to using Freeplay’s Sound Recordings over one thousand times (1000) in its programs. Defendant Haas later stated, through its attorneys, that its use of the Sound Recordings was less extensive, but Defendant Haas has not retracted its admission that it has employed numerous Sound Recordings without Freeplay’s consent, authorization or knowledge.

14. In the incomplete cue sheets that Defendant Haas has provided to Freeplay, it has admitted to using, on multiple occasions, at least the following songs in programming featured on the Defendant TOCI’s broadcasts:

- a. Trudge; Far, Bouncing; Mod Indigo; Clear; and Chili Stain. All these songs are protected by Freeplay U.S. Copyright Registration No. SR 333-651. A true and correct copy this registration certificate is attached hereto as Exhibit A.
- b. Canned Heat; Bad Moon; Stratosphere; and Uptown Blues. All these songs are protected by Freeplay U.S. Copyright Registration No. SR 336-939. A true and correct copy this registration certificate is attached hereto as Exhibit A.
- c. Forest For The Trees; Heartland; Prevailing Winds; Comeback; Calm River; Beauty Shot; Press; On the Water; and Gibson Road. All these songs are protected by Freeplay U.S. Copyright Registration No. SR 337-200. A true and correct copy this registration certificate is attached hereto as Exhibit A.

- d. From the Heavens; Dawn Mist; Personal Demons; Natural Beauty; Intrepid Traver; The Path Less Traveled; Blue Monday; Truce; and Dark Haze. All these songs are protected by Freeplay U.S. Copyright Registration No. SR 335-548. A true and correct copy this registration certificate is attached hereto as Exhibit A.
- e. Whiskey Breath; Bomp; and Bad Road. All these songs are protected by Freeplay U.S. Copyright Registration No. SR 337-144. A true and correct copy this registration certificate is attached hereto as Exhibit A.
- f. Good Night Kiss; Without; Clockwork; Four AM; and Big Sky. All these songs are protected by Freeplay U.S. Copyright Registration No. SR 337-205. A true and correct copy this registration certificate is attached hereto as Exhibit A.
- g. Quiet Storm; That's What I Like; Journey's End; and Delta Fog. All these songs are protected by Freeplay U.S. Copyright Registration No. SR 337-059. A true and correct copy this registration certificate is attached hereto as Exhibit A.
- h. Dangling Tango; Amplife; Whipsaw; Bolo Punch; Fast Cut; The Fighter; and First Round Knockout. All these songs are protected by Freeplay U.S. Copyright Registration No. SR 335-543. A true and correct copy this registration certificate is attached hereto as Exhibit A.
- i. Give Me The Ball; Platterpuss; Big Push; and Weird Trip. All these songs are protected by Freeplay U.S. Copyright Registration No. SR 337-058. A true and correct copy this registration certificate is attached hereto as Exhibit A.
- j. Breakaway; For Whom The Bell Tolls; and Heroes Salute. All these songs are protected by Freeplay U.S. Copyright Registration No. SR 335-537. A true and correct copy this registration certificate is attached hereto as Exhibit A.
- k. Collide; Celtic Tale; Celtic Highway; Carry On; Out In the Fields; World Mix; A Clearing; and Awakening. All these songs are protected by Freeplay U.S. Copyright Registration No. SR 337-206. A true and correct copy this registration certificate is attached hereto as Exhibit A.
- l. Sunshine Daydream; If At First; High Drama; Quest; Svetlana; Pain; and Dumbek Dance. All these songs are protected by Freeplay U.S. Copyright Registration No. SR 336-935. A true and correct copy this registration certificate is attached hereto as Exhibit A.
- m. Tribal Dance; Jungle Mist; Ayres Rock; Aborigine; Red Sky; Under; The Path; Lowfrican; The Call; and Moteff. All these songs are protected by Freeplay U.S. Copyright Registration No. SR 337-196. A true and correct copy this registration certificate is attached hereto as Exhibit A.

- n. La Neige D'antans; Magic Dulcimer; China Wall; Lucky Lu; Uncertain Achievement; Challenge; and Rise and Shine. All these songs are protected by Freeplay U.S. Copyright Registration No. SR 333-618. A true and correct copy this registration certificate is attached hereto as Exhibit A.
- o. Dim Horizon; Crossing; The Wall; The Battle; and Companion. All these songs are protected by Freeplay U.S. Copyright Registration No. SR 335-708. A true and correct copy this registration certificate is attached hereto as Exhibit A.
- p. Driven; Get On Up; Walk The Walk; Close Encounters; Eye Spy; For the Glory; Come On Over; See You There; Smooth Operator; In Space; iFunk; Highway; Metalic Rage; Marshall Law; Summers Eve; Years Gone By; Closer To You; and Conflict. All these songs are protected by Freeplay U.S. Copyright Registration No. SR 374-914. A true and correct copy this registration certificate is attached hereto as Exhibit A.
- q. Red Mustang; Vantage Point; Beyond The Sunset; Native American; Earth; Summer Trip; Meet You There; Right Now; and Up All Night. All these songs are protected by Freeplay U.S. Copyright Registration No. SR 386-596. A true and correct copy this registration certificate is attached hereto as Exhibit A.
- r. Appalachian Sunrise and Free Rider. Both these songs are protected by Freeplay U.S. Copyright Registration No. SR 337-119. A true and correct copy this registration certificate is attached hereto as Exhibit A.
- s. Silence; Obsidian; Blue Ridge Mountain Mist; Snakes On The Take; Silence; Rompin Reptiles; and Jules. Both these songs are protected by Freeplay U.S. Copyright Registration No. SR 378-924. A true and correct copy this registration certificate is attached hereto as Exhibit A.
- t. Another Day; Moments Remembered; Necessary Risk; Another Day; Smooth; Temptress; Harp Scape; Psychosirrus; Paralyze; Honky Tonk Hank; The Way I Feel; Feel Good; Summer Dawn; and Full Force. All these songs are protected by Freeplay U.S. Copyright Registration No. SR 374-911. A true and correct copy this registration certificate is attached hereto as Exhibit A.
- u. Seventies; Scare; Glow; Jump; Eternal; Answers; Blind Date; Going Gone; Final Cut; Things We Said; Dark and Stormy; Feel Good; Punk Life; Speed Racer; Bass Drum; Keep It; Martial Bayou; Quiet Corner; Cool Glider; Bipolar; and I Wonder. All these songs are protected by Freeplay U.S. Copyright Registration No. SR 374-912. A true and correct copy this registration certificate is attached hereto as Exhibit A.
- v. Ticker Shock and From the Sky. Both these songs are protected by Freeplay U.S. Copyright Registration No. SR 333-636. A true and correct copy this registration certificate is attached hereto as Exhibit A.

- w. October Sunset; Forever; Loving You; Hard To Hold; and Bad Bad Boy. All these songs are protected by Freeplay U.S. Copyright Registration No. SR 335-719. A true and correct copy this registration certificate is attached hereto as Exhibit A.
- x. Texan; El Rey; and Manchester Moon. All these songs are protected by Freeplay U.S. Copyright Registration No. SR 337-557. A true and correct copy this registration certificate is attached hereto as Exhibit A.
- y. Walking Wary; Jolt; Vertical Assault; Wicked Hill; and Wasteland. All these songs are protected by Freeplay U.S. Copyright Registration No. SR 336-934. A true and correct copy this registration certificate is attached hereto as Exhibit A.
- z. The Vanquished and Mean Machine. Both these songs are protected by Freeplay U.S. Copyright Registration No. SR 336-918. A true and correct copy this registration certificate is attached hereto as Exhibit A.
- aa. Olympic Fanfare; To Win Your Heart; Victory; and Wings Of The Wind. All these songs are protected by Freeplay U.S. Copyright Registration No. SR 335-926. A true and correct copy this registration certificate is attached hereto as Exhibit A.
- bb. Turning The Tide; Precedent; and Capitol W. All these songs are protected by Freeplay U.S. Copyright Registration No. SR 336-929. A true and correct copy this registration certificate is attached hereto as Exhibit A.
- cc. Soul Thang. This song is protected by Freeplay U.S. Copyright Registration No. SR 337-201. A true and correct copy this registration certificate is attached hereto as Exhibit A.
- dd. PM Theme; Global Connect; and Three Day Bender. All these songs are protected by Freeplay U.S. Copyright Registration No. SR 336-919. A true and correct copy this registration certificate is attached hereto as Exhibit A.
- ee. Can Do; Open Forest; and Victory Planet. All these songs are protected by Freeplay U.S. Copyright Registration No. SR 333-631. A true and correct copy this registration certificate is attached hereto as Exhibit A.
- ff. Brighten Up and In Your Heart. Both these songs are protected by Freeplay U.S. Copyright Registration No. SR 362-469. A true and correct copy this registration certificate is attached hereto as Exhibit A.
- gg. Cat Briar Road; Kick It; Cuttin Loose; Corn Liquor; and If It Takes All Night. All these songs are protected by Freeplay U.S. Copyright Registration No. SR 337-

057. A true and correct copy this registration certificate is attached hereto as Exhibit A.
- hh. Mach 77; You Too As Well; Buzz; and Moving Out. All these songs are protected by Freeplay U.S. Copyright Registration No. SR 337-221. A true and correct copy this registration certificate is attached hereto as Exhibit A.
- ii. Penthouse For Two. This song is protected by Freeplay U.S. Copyright Registration No. SR 334-609. A true and correct copy this registration certificate is attached hereto as Exhibit A.
- jj. Touchstone; Endless Motion; Carmel Latte; Boxing Day; and Assured. All these songs are protected by Freeplay U.S. Copyright Registration No. SR 336-994. A true and correct copy this registration certificate is attached hereto as Exhibit A.
- kk. Edge Of Day and After Dark. Both these songs are protected by Freeplay U.S. Copyright Registration No. SR 396-282. A true and correct copy this registration certificate is attached hereto as Exhibit A.
- ll. Skewed; Earth Mover; and Acid Indigestion. All these songs are protected by Freeplay U.S. Copyright Registration No. SR 335-678. A true and correct copy this registration certificate is attached hereto as Exhibit A.
- mm. Pride. This songs is protected by Freeplay U.S. Copyright Registration No. SR 335-879. A true and correct copy this registration certificate is attached hereto as Exhibit A.
- nn. Devil Ride. This song is protected by Freeplay U.S. Copyright Registration No. SR 337-061. A true and correct copy this registration certificate is attached hereto as Exhibit A.
- oo. West Side; Come On. This song is protected by Freeplay U.S. Copyright Registration No. SR 374-845. A true and correct copy this registration certificate is attached hereto as Exhibit A.
- pp. Repeater; Cacaphony; and Big Gunns. All these songs are protected by Freeplay U.S. Copyright Registration No. SR 337-199. A true and correct copy this registration certificate is attached hereto as Exhibit A.
- qq. Far Away. This song is protected by Freeplay U.S. Copyright Registration No. SR 333-635. A true and correct copy this registration certificate is attached hereto as Exhibit A.
- rr. Leathal System; Marathon; 4 Speed; Heroes; and Did You Find The Bird. All these songs are protected by Freeplay U.S. Copyright Registration No. SR 374-

913. A true and correct copy this registration certificate is attached hereto as Exhibit A.

ss. Blaster. This song is protected by Freeplay U.S. Copyright Registration No. SR 337-212. A true and correct copy this registration certificate is attached hereto as Exhibit A.

15. True and correct copies of the Freeplay's U.S. Copyright Certificates of Registration identified in paragraph 14 are attached hereto as Exhibit A.

16. Based on the incomplete cue sheets Haas has provided to Freeplay, the Defendants have admitted to using each of the songs identified in the foregoing paragraph on multiple occasions, which means that Defendants have committed multiple infringements of each of the Sound Recordings. For example, Defendant has admitted to using some of the Sound Recordings on as many as nine different programs. These programs include, but are not necessarily limited to, the following: American Hunter 2004; American Hunter 2005; American Hunter 2006; Hunting the Country 2004; Hunting the Country 2005; Hunting the Country 2006; Mossy Oak Classic 2004; Mossy Oak Classic 2005; Mossy Oak Classic 2006; Mossy Oak Second Season 2005; Step Outside 2004; Step Outside 2005; and Whistling Wings 2006. The full extent of Defendants' infringement is not yet known because of the incomplete and conflicting information it has provided to Freeplay thus far.

17. On information and belief, Defendants knew that they had no authorization to use the Sound Recordings, but chose to do so anyway. While Defendant Haas has alleged to Freeplay that they thought the Defendant TOCI had a license with BMI to use Freeplay Sound Recordings (which was not the case and which Defendant Haas had no basis to believe), it is indisputable that, because Defendant Haas had licensed from Freeplay in the past, it knew that,

per Freeplay's terms of use, a license was required for the synchronization and master recording rights of the Sound Recordings.

18. As set forth above, Haas downloaded and used music from Freeplay's web site without complying with the "terms of use" clearly set forth on Freeplay's web site. In particular, in clear violation of Freeplay's terms of use, Haas broadcast its infringing programming (through Defendant TOCI) (i) even though TOCI did not have a license from either BMI, ASCAP or SESAC and (ii) neither Haas nor TOCI submitted timely and accurate cue sheets.

19. Upon learning of Defendants' infringement, Freeplay attempted to negotiate a reasonable retroactive license and going forward license for all of 2009 in order to avoid the time and expense of litigation, but Defendant Haas and its lawyers failed to negotiate in good faith by offering reasonable compensation to Freeplay.

20. Freeplay has requested Defendant Haas to provide full details concerning its unauthorized use of the Sound Recordings, including the names and number of Freeplay song titles for each program, the duration of use and usage type, re-air and re-broadcast schedules, and complete show cue sheets as required by both the Freeplay terms of use and BMI, ASCAP, and SESAC. Defendant Haas has not provided this information to date so the extent of the Defendants' infringement of the Sound Recordings and the resulting damage to Freeplay is not yet known.

CAUSES OF ACTION AGAINST BOTH DEFENDANTS

(FEDERAL COPYRIGHT INFRINGEMENT)

21. Plaintiff repeats and re-alleges the allegations set forth in paragraphs 1 through 20, as if fully set forth herein.

22. As a result of the foregoing acts, Defendants have willfully and intentionally infringed Plaintiff's federal copyrights, all in violation of 17 U.S.C. § 501.

CAUSE OF ACTION AGAINST DEFENDANT HAAS

(BREACH OF CONTRACT)

23. Plaintiff repeats and re-alleges the allegations set forth in paragraphs 1 through 22, as if fully set forth herein.

24. Defendant Haas had a duty to comply with the terms of use on Freeplay's web site when it downloaded and used Freeplay's Sound Recordings in its programming, which it allowed to be broadcast on Defendant TOCI.

25. Defendant Haas breached that duty as set forth herein.

26. Plaintiff has suffered damage as a result.

WHEREFORE, Plaintiff demands:

For statutory damages, lost profits, or any other damages provided by law.

For increased damages due to willful infringement per infringed work as provided by law.

For its reasonable attorney's fees and costs.

For such other and further relief as the Court deems just and proper.

Dated: New York, New York
February 28, 2007

LAW OFFICES OF CHRISTOPHER SERBAGI

By: Christopher Serbagi
Christopher Serbagi, Esq. (CS 7746)
488 Madison Avenue, Suite 1120
New York, New York 10022
(212) 593-2112

Attorney for the Plaintiff